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DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

May 14, 1996

Office of the Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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Re: FCC 96-182; CC Docket No. 96-98

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Dear Ladies and Gentlemen:

Enclosed for filing are the original and 16 copies of the Initial Comments of the Oregon Public Utility Commission in the above captioned docket.

Sincerely,

A handwritten signature in cursive script that reads "Benny Won".

W. Benny Won
Assistant Attorney General
Public Utility Section

tjh/WBW0537.PLE
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Implementation of the Local)
Competition Provisions in the) CC Docket No. 96-98
Telecommunications Act of 1996)

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INITIAL COMMENTS OF THE
OREGON PUBLIC UTILITY COMMISSION

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EXECUTIVE SUMMARY

OrPUC has been working on interconnection and unbundling issues for many years, and has developed an appreciation of how complex the issues in this area are. We have been able to work through the issues and have made great strides toward implementing competition in the local exchange in Oregon. One interconnection agreement has been signed, and others are being negotiated. Another order on pricing issues is due in the next couple of months. In light of this progress, the preemptive and prescriptive tone of the FCC's NPRM in this docket was troubling. The FCC would be stepping beyond its authority if it adopts prescriptive rules for states. Congress clearly allows states to have their own regulations, as long as they are consistent with the interconnection provisions of the 1996 Act. About eighty percent - or more - of the population of the United States live in a state where competition is actively encouraged. Many states, like Oregon, have proceeded to the point where there are signed interconnection agreements between incumbent LECs and competitors. Prescriptive rules from the FCC that would require all of this activity to be reevaluated would set back the development of competitive markets, contrary to the intent of Congress. Particularly troubling was the possibility that the FCC might attempt to assert authority over intrastate pricing issues and technical areas such as resale, interconnection points, collocation, and performance standards. In addition, authority over rural exemptions is solely the domain of states. Because the 1996 Act already imposes time limits on arbitration proceedings, the possibility of delays in negotiations does not justify a need for rules.

FCC rules are needed in the areas of network elements to be unbundled, numbering administration, and number portability. We agree with the FCC's analysis that the FCC should adopt a minimum number of network elements to be unbundled, and that states should be able to require additional unbundling. When the FCC does have the authority to set rules for states, they should be broad, general rules that will not interfere with states' programs that are consistent with the 1996 Act. Prescriptive rules that are challenged in court will not guide court decisions, but instead delay implementation of the 1996 Act.

States throughout the country have made much progress toward developing competitive markets. FCC rules that are overly prescriptive could disrupt that progress. In the unlikely event that the FCC decides that preemption of a state may be warranted, the state is entitled to due process. It would not be reasonable to preempt a state activity based only on comments received in this NPRM. The FCC will need its own rules related to the implementation of the 1996 Act if it decides to preempt a state in any area. States that are in the rule development phase themselves could look to these rules for guidance, but should not be required to adopt any of them if they find that another way of implementing the 1996 Act would work better for them. Any rules concerning preemption should also provide mechanisms whereby jurisdiction could return to the state preempted.

Interconnection rules should eliminate the potential for arbitrage. Issues related to access charges and separations should be referred to a Federal/State Joint Board.

We also address the applicability of section 251(c) to interconnection arrangements between incumbent LECs and providers of interexchange services, commercial mobile radio service providers, and non-competing neighboring LECs, as well as the definition of transport and termination of telecommunications.

Because the NPRM consists of a set of questions and tentative conclusions rather than a proposed rule, the FCC has not provided parties with sufficient notice and an opportunity to comment on actual proposals.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

Washington, D. C. 20554

In the Matter of)	FCC 96-182
)	
Implementation of the Local Competition)	CC Docket No. 96-98
)	
Provisions in the Telecommunications Act)	
)	
of 1996)	

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**INITIAL COMMENTS OF THE
OREGON PUBLIC UTILITY COMMISSION**

1. Introduction.

Under Oregon law, the Oregon Public Utility Commission (OrPUC) is responsible for representing the customers of telecommunications utilities in rate, valuation and service matters, in order to protect them from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates. Part of its responsibility is to represent these customers before officers, commissions and public bodies of the United States. See ORS 756.040.

The Oregon Public Utility Commission appreciates this opportunity to comment on the Federal Communications Commission's (FCC or Commission) Notice of Proposed

Rulemaking (NPRM) related to amendments to Chapter 47 of the United States Code, specifically the addition of Sections 251, 252, and 253 by the Telecommunications Act of 1996 (1996 Act).

We have comments to make in many of the areas of this NPRM, but lack of comment should not be construed as a lack of interest on our part. We currently have an open docket (UM 351) dealing with interconnection and unbundling issues and will not comment on issues that are pending in that case. We expect to issue our order before August 1996, and will forward it to the FCC after it has been adopted.

2. The NPRM lacks detail as to what the FCC is proposing, and therefore fails to provide sufficient notice to the parties to enable them to write informed comments about a proposed rule.

Unfortunately, the Notice of Proposed Rulemaking lacks the detail necessary for anyone to write informed comments concerning what the FCC is actually proposing. This notice does not set forth a specific proposal on which parties may comment. It merely asks a series of questions, to which the answers will later be formulated into a rule. Because the rule will be so significant to so many parties, they must have an opportunity to comment on an actual proposal. The lack of detail in this NPRM deprives the parties of a meaningful opportunity to comment.

The lack of specificity in the notice may well be an indication of the time constraint for this rulemaking imposed by the 1996 Act. After the comment periods are over, the FCC will have only a little over two months to develop rules. Given the complexity of the issues, we believe that it is not possible to develop a workable set of detailed, prescriptive rules in this short time period, let alone provide an adequate opportunity for comment. There are other reasons, as well, why broad, general rules are desirable from a policy standpoint. We will discuss these reasons in our comments.

3. Congress envisioned a cooperative federal/state program, but the tone of the NPRM is very preemptive.

We are concerned about the number of times that the FCC asked for input about state activities that are inconsistent with the 1996 Act. In addition to general discussions about its preemption authority, the FCC asks for information about state activities that are inconsistent with the 1996 Act nine times - in paragraphs 52, 59, 62, 65, 70, 82, 171, 234, and 243. The impression these questions give is that the FCC seems more interested in preempting states than in cooperating with them, which is inconsistent with the intent of Congress. The FCC seems to be of the opinion that its rules will open local exchange markets to competition, but the reality is that states have already opened many local exchange markets to competition and many more would open up whether or not federal legislation had passed and whether or not the FCC adopted rules pursuant to this NPRM.

The Or PUC is looking forward to a cooperative effort between states and the FCC to implement the 1996 Act. We want to be able to continue our pursuit of a competitive market for local exchange service, and hope these comments will assist the FCC to develop rules that will allow us to continue with our approach.

4. Any state threatened with FCC preemption under the 1996 Act has the right to due process to demonstrate that its activities are consistent with it.

As discussed in paragraph 265, section 252(e)(5) provides for FCC preemption if a state does not act upon an arbitrated agreement in the time frame set out in Section 252(e)(4), or fails to carry out its responsibility “in any proceeding or other matter under this section.” Paragraph 265 asks whether the FCC should establish procedures for notification to the FCC of the failure of a state commission to so act. We believe such procedures are necessary for an orderly and appropriate assumption of authority by the FCC. The bases for preemption under this section are so broad that notice, and opportunity to respond by the state or other parties, would be a safeguard against unnecessary or unwarranted preemption. Preemption based merely on comments received in this NPRM would be unwarranted.

5. The FCC should develop a mechanism to return jurisdiction to a state when preemption is no longer appropriate.

As discussed in paragraph 267, section 252(e) provides that if a state fails to accept or reject a mediated or arbitrated agreement, the FCC shall preempt the state “with respect to the proceeding or matter and act for the state commission.” The FCC seeks comment as to whether it should retain jurisdiction, or give it back to the state. Because the FCC would be establishing the terms of the mediated or arbitrated agreement, it should normally retain jurisdiction to enforce its terms. The FCC would know, better than the state, what it intended in accepting or rejecting an individual agreement. Failure by a state to act on one agreement should not vest jurisdiction in the FCC for other agreements or matters. There should also be provisions for a return to the state commission even on a preempted agreement or other matter. Circumstances could change at the state commission, and it should be allowed to then reassert jurisdiction. A request from a state commission should trigger consideration of a return to state jurisdiction. The FCC should also consider a return of jurisdiction to the state if any party requests it.

6. Many of the tentative conclusions drawn fail to recognize work that states have already done and would impede state efforts already under way.

At paragraph 26, the FCC expresses its desire to give due regard to the work that states have already done. It is clear, however, that some of the tentative conclusions

drawn would significantly impede the ability of states to carry out a coherent effort to implement the provisions of the 1996 Act. In fact, the FCC has a statutory duty to see that its rules do not harm state commission actions related to access and interconnection obligations of local exchange carriers, as long as they are consistent with the interconnection section of the 1996 Act and do not substantially prevent its implementation (47 USC 251(d)(3)). The Oregon Public Utility Commission has already issued an order setting the framework for interconnection between incumbent local exchange carriers and competitors (Order 96-021, included as Attachment A). We believe that this order is consistent with the provisions of the 1996 Act. The FCC should take care not to impair our activities under Order 96-021, or our other regulations related to competition that were developed pursuant to state law to foster the development of competition in Oregon.

In paragraph 30, there is a discussion of how explicit rules for network configurations could result in significant cost savings for new entrants. Questions that should be asked, as well, in this context are: Who pays for the changes in the incumbents' networks that make it cheaper for the new entrants to interconnect? If the competitors are assessed these costs, will it be cheaper for them to interconnect than it would have been otherwise? Is the kind of rule that requires one company to pay costs that benefit another company competitively neutral? In Oregon, we do not require uniform network configurations. We have determined that the costs of interconnection should be shared in equal amounts by both the incumbent LEC and the competitor. With this rule, both sides

have an incentive to keep costs low. We are not recommending that this rule be adopted as a model for all states, however, since we believe states should be allowed to experiment with policies that are best suited to their own local conditions.

Many states, including Oregon, will be issuing orders related to interconnection and unbundling before the FCC's final rule is issued, probably in August 1996. In order to avoid blocking the progress that these states are making, the rule should be very general so that any rule, law, or other state activity undertaken to promote competition in the local exchange market that is consistent with the 1996 Act can be continued without interference. It is unlikely that Congress meant to halt state progress when it passed the 1996 Act, so we believe that all orders issued by state commissions prior to the issuance of FCC rules, as well as those that will be issued in the future, are protected from FCC interference. This is a further indication that the FCC's rules should be very general whenever the FCC's authority is not explicit.

In spite of our belief that our work and that of other states is consistent with the 1996 Act, we do not believe that any one state should be taken as an example and used as a model for all states to follow. Solutions produced in one situation do not necessarily fit another. And, if the FCC were to select solutions from different states for different parts of the rule, a "best of the best" approach, it is likely that some of the solutions would be found to be incompatible.

7. State commissions have done more than the FCC's NPRM gives them credit for.

The FCC attempts to make a case for a need for specific rules by claiming that many states have not yet adopted rules related to local competition. Looking at the list of states in footnote 43 to paragraph 28, one can easily compute that the proportion of the population of the United States that lives in those states exceeds 61 percent. So, well over half of the population now has rules available that will allow competition in the local exchange market whether or not the 1996 Act had passed, and whether or not the FCC ever issues rules. More states will be includable in that list soon. Some more rural states, such as Maine, assessed the amount of interest in competitive markets in their states but found little. While Maine did not adopt rules, it acted quickly to accept AT&T's request to become a certified local exchange carrier. Lack of interconnection rules is not necessarily an indication that a state commission will not move quickly to foster competition when competitors express an interest in entering the market. Issuing prescriptive rules where the markets are just not attractive to competitors because they are too small will do nothing to promote competition.

In a recent article in the State Telephone Regulation Report (Volume 14, No. 7, page 8), states that have recently certified companies to enter the local exchange market are listed. Some of the states are already included in the list the FCC provided in footnote 10. Some are not. The states not listed are New Jersey, Wisconsin, Texas, and Pennsylvania. This brings to at least 24 (including Maine) the number of states that have

concrete local competition activity occurring even now, before FCC rules are in place. The additional five states represent about 17 percent of the population of the United States. So, with activity in these 24 states, nearly eighty percent of the population of the United States lives in a state where activity to encourage local competition is occurring. And, we are certain that there are other states not included in this list that are in the process of carrying out proceedings to foster local competition. Absence of rules for local competition is not a valid measure of whether activity that fosters local competition is taking place in a state. Smaller states with no competition immediately on their horizons will be initiating proceedings because of the enactment of the federal law. There is little doubt that the states without rules for interconnection are generally small in comparison to the states that have already taken action. The total that have supposedly not taken action is 26 states, or 52 percent of the total number of states, yet these states have about twenty percent of the total population. The point is that competition is already moving forward in states that have attractive markets, even before FCC rules are issued. Specific rules to guide these states are unnecessary. Competitive local exchange companies are attempting to enter markets in more than one state, demonstrating that separate state requirements are not a barrier to entry. As for the states to which competition will come more slowly, they will have ample opportunity to learn from the states where competitors are already operating. They do not need specific rules from the FCC, either.

8. The scope of authority the FCC proposes to exert through its rules to implement Section 251 is overly broad. (Sections II.A. and II.B.2.d.(1) of the NPRM)

Section 251(d)(1) of the Telecommunications Act of 1996 directs the Federal Communications Commission to establish rules "to implement the requirements of this section[.]" which imposes, inter alia, obligations on incumbent local exchange carriers (incumbent LECs) to open their networks to competitors by offering interconnection, services, unbundled network elements, and telecommunications services at wholesale rates for resale.

OrPUC respectfully disagrees with the Commission's tentative conclusions in its Notice of Proposed Rulemaking (NPRM) in this docket (April 19, 1996) that its rules implementing section 251 of the 1996 Act would apply to intrastate as well as interstate aspects of interconnection, service and network elements. OrPUC submits that such an interpretation of the 1996 Act, which would have the effect of preempting state laws, is contrary to other provisions of the 1996 Act as well as the legislative history and apparent Congressional intent. The Commission's tentative conclusions in question include the following:

37. On a separate jurisdictional issue, we tentatively conclude that Congress intended sections 251 and 252 to apply to both interstate and intrastate aspects of interconnection, service, and network elements, and thus that our regulations implementing these provisions apply to both aspects as well. It would make little sense, in terms of economics, technology, or jurisdiction, to distinguish

between interstate and intrastate components for purposes of sections 251 and 252. Indeed, if the requirements of sections 251 and 252 regarding interconnection, and our regulations thereunder, applied only to interstate interconnection, as might be argued in light of the lack of a specific reference to intrastate service in those sections, states would be free, for example, to establish disparate guidelines for intrastate interconnection with no guidance from the 1996 Act. We believe that such a result would be inconsistent with Congress' desire to establish a national policy framework for interconnection and other issues critical to achieving local competition. * * *

38. We also tentatively conclude that it would be inconsistent with the 1996 Act to read into sections 251 and 252 an unexpressed distinction by assuming that the FCC's role is to establish rules for interstate aspects of interconnection and the states' role is to arbitrate and approve intrastate aspects of interconnection agreements. Because the statute explicitly contemplates that the states are to follow the Commission's rules, and because the Commission is required to assume the state commission's responsibilities if the state commission fails to act to carry out its section 252 responsibilities, we believe that the jurisdictional role of each must be parallel. * * *

39. Section 2(b) of the 1934 Act [Communications Act of 1934] does not require a contrary tentative conclusion. Section 2(b) [47 USC § 152(b)] provides that, except as provided in certain enumerated sections not including sections 251 and 252, "nothing in [the 1934] Act shall be construed to apply or to give to the Commission jurisdiction with respect to * * * charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier * * *." * * * In enacting section 251 after section 2(b) and squarely addressing therein the issues before us, we believe Congress intended for section 251 to take precedence over any contrary implications based on section 2(b). * * *

118. We note that, under the statutory framework established by Congress, states have the critical role under section 252 of establishing rates pursuant to arbitration and of reviewing rates under BOC statements of generally available terms. Rates for both arbitrated agreements and BOC statements of generally available terms must be in accordance with section 252(d), which sets forth specific "pricing standards" for interconnection and unbundled elements, wholesale services, and transport and termination of traffic under reciprocal compensation arrangements. The 1996 Act appears to give a role to both the states and the Commission regarding rates for interconnection, unbundled network elements, wholesale services, and reciprocal compensation arrangements. We believe that the statute, and in particular our statutory duty to implement the pricing requirements of section 251, as elaborated in section 252, is reasonably read to require that we establish pricing principles interpreting and further

explaining the provisions of section 252(d) for the states to apply in establishing rates in arbitrations and in reviewing BOC statements of generally available terms and conditions. Such an approach appears to be consistent with both the language and the goals of the statute.

120. Finally, consistent with our earlier discussion that sections 251 and 252 do not make jurisdictional distinctions between interstate and intrastate services and facilities, we tentatively conclude that the pricing principles we establish pursuant to section 251(d) would not recognize any jurisdictional distinctions, but would be based on some measure of unseparated costs. We do not believe section 2(b) requires a different conclusion. * * *

OrPUC does not believe that Congress intended for section 251 of the 1996 Act to take precedence over any contrary implications based on section 2(b) of the 1934 Act. As the Commission acknowledges in paragraph 37 of the NPRM, there is no reference to intrastate service in Section 251. Section 601(c)(1) of the 1996 Act expressly states:

NO IMPLIED EFFECT. This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments. (Emphasis added.)

See also Joint Explanatory Statement of the Committee of Conference ("Joint Explanatory Statement"), at 85 ("This provision prevents affected parties from asserting that the bill impliedly preempts other laws.")

In Louisiana Public Service Commission v. Federal Communications Commission, 476 US 355 (1986), the United States Supreme Court held that the intrastate exemption to FCC jurisdiction, 47 USC § 152(b), bars the FCC from requiring

state commissions to follow FCC depreciation practices for dual jurisdiction telephone plant and equipment for intrastate ratemaking purposes. The Court stated, in relevant part:

[T]he best way of determining whether Congress intended the regulations of an administrative agency to displace state law is to examine the nature and scope of the authority granted by Congress to the agency. Section 152(b) constitutes, as we have explained above, a congressional denial of power to the FCC to require state commissions to follow FCC depreciation practices for intrastate ratemaking purposes. Thus, we simply cannot accept an argument that the FCC may nevertheless take action which it thinks will best effectuate a federal policy. To permit an agency to expand its power in the face of a congressional limitation on its jurisdiction would be to grant to the agency power to override Congress. This we are both unwilling and unable to do.

Moreover, we reject the intimation, the position is not strongly pressed, that the FCC cannot help but preempt state depreciation regulation of joint plant if it is to fulfill its statutory obligation and determine depreciation for plant used to provide interstate service, *i.e.*, that it makes no sense within the context of the Act to depreciate one piece of property two ways. The Communications Act not only establishes dual state and federal regulation of telephone service; it also recognizes that jurisdictional tensions may arise as a result of the fact that interstate and intrastate service are provided by a single integrated system. * * *

476 US at 374-375 (emphasis in original).

The system of dual state and federal regulation of telephone service was continued by Congress in the 1996 Act, which assigns to the states many responsibilities, and substantial discretion, in implementing provisions of this Act, so long as the states' policies and rules are not inconsistent with the provisions or purposes of the Act (e.g., sections 251(d)(3) and (f), 252, 253(b), (c), and (f), 254(f), and 102). Section 261 of the 1996 Act provides, in relevant part:

(b) **EXISTING STATE REGULATIONS.** Nothing in this part shall be construed to prohibit any State commission from enforcing regulations prescribed prior to the date of enactment of the Telecommunications Act of 1996, or from prescribing regulations after such date of enactment, in fulfilling the requirements of this part, if such regulations are not inconsistent with the provisions of this part.

(c) **ADDITIONAL STATE REQUIREMENTS.** Nothing in this part preclude a State from imposing requirements on a telecommunications carrier for intrastate services that are necessary to further competition in the provision of telephone exchange service or exchange access, as long as the State's requirements are not inconsistent with this part or the [Federal Communications] Commission's regulations to implement this part.

See also Joint Explanatory Statement, at 25.

Also, section 251 itself provides, in relevant part:

(d) **IMPLEMENTATION.,**

* * * * *

(3) **PRESERVATION OF STATE ACCESS REGULATIONS.,**In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that,

(A) establishes access and interconnection obligations of local exchange carriers;

(B) is consistent with the requirements of this section; and

(C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

Moreover, the Commission's tentative conclusions that its rules implementing section 251 of the 1996 Act would apply to intrastate as well as interstate aspects of

interconnection, service and network elements are not supported by the legislative history of the 1996 Act. That is, earlier versions of the legislation that ultimately became the 1996 Act contained more preemptive provisions that would have reduced the scope of the intrastate exemption in section 2(b) of the 1934 Act. However, these versions were not enacted, which indicates that Congress intended the Commission's regulations implementing section 251 not to apply to intrastate aspects of interconnection, etc.

Indeed, it should be pointed out here that, if the Commission were to establish prices or pricing standards for intrastate interconnection, services and unbundled network elements, the prices set for these components of telecommunications services would surely affect the retail pricing of local exchange services to end users, which pricing the Commission states, in paragraph 40 of the NPRM, would "continue to be subject to state authority." Thus, the Commission's tentative conclusions in the NPRM are inconsistent and incorrect. They would have the effect of preempting the states' regulation of intrastate telecommunications services, contrary to the 1996 Act as well as section 2(b) of the 1934 Act.

For example, the Commission's tentative conclusions in question would nullify the authority given to the states in section 252(d) of the 1996 Act. That statute, which expressly refers to state commissions several times, provides:

(d) PRICING STANDARDS.,

**(1) INTERCONNECTION AND NETWORK ELEMENT
CHARGES.,**

Determinations by a state commission of the just and reasonable rate for the interconnection of facilities and equipment for the purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section,

(A) shall be,

(i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit.

**(2) CHARGES FOR TRANSPORT AND TERMINATION OF
TRAFFIC.,**

(A) IN GENERAL.,For the purposes of compliance by an incumbent local exchange carrier with section 251(b)(5), a State commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless,

(i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and

(ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.

(B) RULES OF CONSTRUCTION.,This paragraph shall not be construed,

(i) to preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements); or

(ii) to authorize the Commission or any State commission to engage in any rate regulation proceeding to establish with particularity the additional costs of transporting or terminating calls, or to require carriers to maintain records with respect to the additional costs of such calls.

(3) WHOLESALE PRICES FOR TELECOMMUNICATIONS

SERVICES., For the purposes of section 251(c)(4), a State commission shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

The Joint Explanatory Statement states, in relevant part:

New section 252(c) requires a State commission to ensure that any resolution of unresolved issues in a negotiation meets the requirements of new section 251 and any regulations to implement that section. To the extent that a State establishes the rates for specific provisions of an agreement, it must do so according to new section 252(d). * * *

New section 252(d) combines the pricing standards in the Senate bill and the House amendment. Charges for interconnection under new section 251(c)(2) and for network elements under new section 251(c)(3) are to be determined based on cost and may include a reasonable profit. Charges for transport and termination of traffic pursuant to new section 251(b)(5) are to be based on reciprocal compensation. The wholesale rate for resold telecommunications services under new section 251(c)(4) is to be determined by the State commission on the basis of the retail rate charged to subscribers of such telecommunications services, excluding costs that will be avoided by the incumbent carrier.

Joint Explanatory Statement, at 12 (emphasis added).

The express references to state commissions in sections 251 and 252 and the Joint Explanatory Statement, together with the references in section 252 to provisions of section 251, compel the conclusions that, except as otherwise expressly provided: